

December 18, 2001

Mr. Michael P. Johnson  
LANIER FORD SHAVER & PAYNE P.C.  
P.O. Box 2087  
Huntsville, Alabama 35804

RE: Associated Pharmacies, Inc.  
No. 01 - 010

Dear Mr. Johnson:

The Arkansas Securities Department is in receipt of your request, on behalf of Associated Pharmacies, Inc ("API" or "Company"), that the Arkansas Securities Department ("Department") issue a no-action letter, determining that Certificates of Membership and Participation (each a "Certificate" or collectively "Certificates") in API are not a "security" within the meaning of the Arkansas Securities Act.

You have represented in correspondence to the Department the following facts:

API is a corporation established by a group of independent retail pharmacies under the Alabama Business corporations Act. API was formed for the purpose of enabling such pharmacies to aggregate their buying power in negotiating discounts on the purchase of pharmaceutical products from their manufacturers and wholesale vendors. Currently, there are eleven shareholders in API. In addition, other pharmacies purchase from API without being shareholders in API.

In January of 2002, API plans to recapitalize by requiring each of its current shareholders to surrender all of their respective shares of \$1.00 par value common stock in exchange for one no par value Certificate of Membership and Participation. The Certificates will constitute the only equity interests of API. The pharmacies that currently patronize API will be given the opportunity to become members of API. To become a member of API, each pharmacy will be required to purchase one Certificate for a specified dollar amount.

API intends to seek new members within and outside the State of Alabama in addition to pharmacies that currently purchase from API. API plans to offer membership to pharmacists located in the State of Arkansas.

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API's Articles of Incorporation and Bylaws provide that each member shall have the opportunity to own only one Certificate and that each member shall have one vote on all matters coming before the membership. The Articles and Bylaws contain provisions that restrict the transfer of the Certificates. In the event of (a) a member's death, (b) a member ceasing to be engaged in the retail pharmacy business, or (c) a member ceasing to purchase from API, then API is obligated to repurchase, and such member is obligated to sell, his Certificate for the amount of the original purchase price. The value of the Certificates cannot appreciate.

API will make distributions to members and non-members in the form of patronage refunds. API has designated several contracts with wholesale vendors as contracts that pay a patronage refund to members and non-members alike (the "Refund Contracts"). Shares of patronage refunds are based on volume of patronage with regard to specific product categories under the Refund Contracts.

API will make distributions to members in the form of patronage dividends. Patronage dividends will be distributed in a manner similar to patronage refunds, except that the patronage dividends distributed to members are rebates from certain contracts paid to API, after the withholding of a percentage for operating expenses and a reasonable reserve. A pharmacy must own a Certificate to qualify for a distribution of a patronage dividend.

The Certificates are not transferable by the owners thereof at a profit. Upon termination of membership, Certificates shall be purchased by API at the price such member bought his Certificate.

It is your position that the Certificates of Membership described above are not a "security" within the meaning of Section 23-42-102(15)(A) of the Act. In support of your contention you point out that the Certificates are not transferable except when sold back to API, and in that event the price remains the same as the original purchase price. With regard to distributions made to holders of Certificates, the amount of distribution is based on the amount of patronage, not on the number of Certificates held. Ordinary dividends are not paid to Certificate holders and financial benefits of membership in the cooperative are not determined by the number of shares owned, but rather by the member's purchases of merchandise from the Company. Lastly, the stock does not appreciate in value, nor is it purchased to achieve increases in value as a result of the efforts of others. The shares of the company lack the qualities of an investment security. They are required merely as an incident of cooperative membership in the API and have no marketability.

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Based upon the representations contained in your letter, the Department will not recommend any enforcement action to the Arkansas Securities Commissioner regarding the registration of the Certificates of Membership and Participation in Associated Pharmacies, Inc. if the program is carried out as set forth in your letters.

Please note that the position of this Department is based solely upon the representations made to us in your letter and applies only to the transactions identified herein. Different facts or circumstances might, and often would, require a different response. The position expressed deals only with anticipated enforcement action by this Department and does not purport to be a legal opinion.

Very truly yours,

DAVID H. SMITH  
Staff Attorney